

APPEAL NO. 180315
FILED MARCH 20, 2018

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 2, 2018, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the appellant (claimant) did not sustain a compensable injury on (date of injury); and (2) because the claimant did not sustain a compensable injury, the claimant had no disability resulting from the claimed injury.

The claimant appealed, disputing the ALJ's determinations of compensability and disability. The respondent (carrier) responded, urging affirmance of the disputed compensability and disability determinations.

DECISION

Reversed and remanded.

The claimant testified that she injured her back when the corner of a rug got caught in the vacuum cleaner while she was vacuuming at work. In evidence is a medical record dated March 2, 2016, that gave as a history that the claimant reported muscle pain and spasms across her lower back with increased pain with bending over at the waist. The report further stated that: "[s]ymptoms started about a week ago after vacuuming at work."

In his discussion of the evidence the ALJ noted that it was only during the March 1, 2017, visit that a reference to the vacuum cleaning episode of (date of injury), was made for the first time. This is a misstatement of evidence presented at the CCH. While the ALJ can accept or reject in whole or, in part, the evidence regarding the claimed injury, his decision in this case is based, in part, upon a misstatement of the medical evidence in the record. Accordingly, we reverse the ALJ's determination that the claimant did not sustain a compensable injury on (date of injury), and remand the issue of compensability to the ALJ for further action consistent with this decision.

Because we have reversed and remanded the issue of compensability, we also reverse the ALJ's determination that because the claimant did not sustain a compensable injury, the claimant had no disability resulting from the claimed injury, and we remand the issue of disability to the ALJ for further action consistent with this decision.

SUMMARY

We reverse the ALJ's determination that the claimant did not sustain a compensable injury on (date of injury), and remand the compensability issue to the ALJ.

We reverse the ALJ's determination that because the claimant did not sustain a compensable injury, the claimant had no disability resulting from the claimed injury and remand the disability issue to the ALJ.

REMAND INSTRUCTIONS

On remand the ALJ is to correct his misstatement of the evidence regarding the medical records in evidence. The ALJ shall consider all of the evidence and make a determination of whether the claimant sustained a compensable injury on (date of injury), and whether the claimant had disability from March 2, 2016, to the date of the CCH. The ALJ is to consider no additional evidence on remand.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the ALJ, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge